

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JOSE JIMENEZ,

Defendants.

8:15CR320

ORDER

This matter is before the court on defendant's motion to vacate pursuant to [28 U.S.C. § 2255](#). [Filing No. 96](#). Under the Rules Governing Section 2255 Proceedings for the United States District Courts ("2255 Rules"), the court must perform an initial review of the defendant's § 2255 motion. See [28 U.S.C. § 2255](#), Rule 4(b). The rules provide that unless "it plainly appears from the face of the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief," the court must order the United States Attorney to respond to the motion. *Id.*

The defendant entered a plea of guilty to Counts II and III of the Indictment. [Filing No. 57](#). Count II charged the defendant with possession with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine in violation of [21 U.S.C. §§ 841\(a\)\(I\)](#) and (b)(I), and Count III charged defendant with possession of a firearm in furtherance of a drug crime in violation of [18 U.S.C. § 924\(c\)\(1\)\(A\)](#). [Filing No. 1](#). The court sentenced defendant to imprisonment for a term of one hundred twenty (120) months on Count II and for a term of sixty (60) months on Count III, said terms of imprisonment to be served consecutively. [Filing No.](#)

[82](#). In his § 2255 motion, the defendant alleges that he received ineffective assistance of counsel in connection with his guilty plea and sentencing. [Filing No. 96](#).

On initial review, the court finds that it does not plainly appear that the defendant is entitled to no relief and that the government should be required to answer. On receipt of the government's answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant's claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. See Rule 8(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

The court previously allowed defendant to file a brief in support of his motion. [Filing No. 97](#) and [Filing No. 98](#). Defendant failed to do so. The court will allow defendant to file a brief within 21 days after the government files its brief in this case.

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant's Section 2255 motion within 21 days of the date of this Order.
3. Defendant is permitted to file a brief within 21 days after the government files its brief in this case.

Dated this 21st day of August, 2017.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge